

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-3066

United States of America,

Appellee,

v.

Enrique Cahue-Rangel, also known as
Antonio Diaz-Lopez,

Appellant.

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Appeal from the United States
District Court for the
District of North Dakota.

[UNPUBLISHED]

Submitted: April 5, 2004

Filed: April 14, 2004

Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Enrique Cahue-Rangel appeals the sentence the district court¹ imposed when he pleaded guilty to illegal reentry after deportation following a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). Cahue-Rangel's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S.

¹The Honorable Ralph R. Erickson, United States District Judge for the District of North Dakota.

738 (1967), contending that, for several reasons, the district court should have granted Cahue-Rangel a downward departure.

We conclude, however, that the district court's refusal to depart is unreviewable because the court recognized its authority to depart and declined to do so. See United States v. Koons, 300 F.3d 985, 993-94 (8th Cir. 2002).

After reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we deny the government's motion to dismiss, grant counsel's motion to withdraw, and affirm the judgment.
